

By: Hall

S.B. No. 1714

A BILL TO BE ENTITLED

AN ACT

relating to the expenditure of proceeds and property from and the state's burden of proof in asset forfeiture proceedings under the Code of Criminal Procedure.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 59.02, Code of Criminal Procedure, is amended by amending Subsection (c) and adding Subsection (c-1) to read as follows:

(c) An owner or interest holder's interest in property may not be forfeited under this chapter if the owner or interest holder ~~[proves by a preponderance of the evidence that the owner or interest holder]~~ acquired and perfected the interest:

(1) before or during the act or omission giving rise to forfeiture or, if the property is real property, the owner or interest holder ~~[he]~~ acquired an ownership interest, security interest, or lien interest before a lis pendens notice was filed under Article 59.04(g), ~~[of this code]~~ and did not know or should not reasonably have known of the act or omission giving rise to the forfeiture or that it was likely to occur at or before the time of acquiring and perfecting the interest or, if the property is real property, at or before the time of acquiring the ownership interest, security interest, or lien interest; or

(2) after the act or omission giving rise to the forfeiture, but before the seizure of the property, and only if the

owner or interest holder:

(A) was, at the time that the interest in the property was acquired, an owner or interest holder for value; and

(B) was without reasonable cause to believe that the property was contraband and did not purposefully avoid learning that the property was contraband.

(c-1) The state has the burden of proving by clear and convincing evidence that the circumstances described by Subsection (c) do not apply to property that is subject to seizure and forfeiture under this chapter.

SECTION 2. Article 59.02(h), Code of Criminal Procedure, is amended by amending Subdivision (1) and adding Subdivision (1-a) to read as follows:

(1) An owner or interest holder's interest in property may not be forfeited under this chapter if ~~[at the forfeiture hearing the owner or interest holder proves by a preponderance of the evidence that]~~ the owner or interest holder was not a party to the offense giving rise to the forfeiture and ~~[that]~~ the contraband:

(A) was stolen from the owner or interest holder before being used in the commission of the offense giving rise to the forfeiture;

(B) was purchased with:

(i) money stolen from the owner or interest holder; or

(ii) proceeds from the sale of property stolen from the owner or interest holder; or

(C) was used or intended to be used without the effective consent of the owner or interest holder in the commission of the offense giving rise to the forfeiture.

(1-a) The state has the burden of proving by clear and convincing evidence that the circumstances described by Subdivision (1) do not apply to property that is subject to seizure and forfeiture under this chapter.

SECTION 3. Article 59.021(d), Code of Criminal Procedure, is amended to read as follows:

(d) After seizure of the substitute property, the disposition shall proceed as other cases in this chapter except that the attorney representing the state must prove by clear and convincing ~~[a preponderance of the]~~ evidence:

(1) that the contraband described by Subsection (b) was subject to seizure and forfeiture under this chapter;

(2) the highest fair market value of that contraband during the period in which the owner of the substitute property owned, or had an interest in, the contraband;

(3) the fair market value of the substitute property at the time it was seized; and

(4) that the owner of the substitute property owned or had an interest in contraband with an aggregate value of \$200,000 or more in connection with the commission of an underlying offense giving rise to the forfeiture.

SECTION 4. Article 59.05(b), Code of Criminal Procedure, is amended to read as follows:

(b) All cases under this chapter shall proceed to trial in

1 the same manner as in other civil cases. The state has the burden of
2 proving by clear and convincing [~~a preponderance of the~~] evidence
3 that property is subject to forfeiture.

4 SECTION 5. Article 59.06, Code of Criminal Procedure, is
5 amended by amending Subsections (d) and (d-1) and adding Subsection
6 (d-5) to read as follows:

7 (d) Proceeds and property awarded under this chapter to a
8 law enforcement agency or to the attorney representing the state
9 may be spent by the agency or the attorney only after a budget for
10 the expenditure of the proceeds and property has been submitted to
11 the commissioners court or governing body of the municipality and
12 the commissioners court or governing body approves the expenditure
13 in the manner provided by Subsection (d-5). The budget must be
14 detailed and clearly list and define the categories of
15 expenditures, but may not list details that would endanger the
16 security of an investigation or prosecution. Expenditures are
17 subject to the audit and enforcement provisions established under
18 this chapter. A commissioners court or governing body of a
19 municipality may not use the existence of an award to offset or
20 decrease total salaries, expenses, and allowances that the agency
21 or the attorney receives from the commissioners court or governing
22 body at or after the time the award of proceeds or property is made
23 [~~are awarded~~].

24 (d-1) The head of a law enforcement agency or an attorney
25 representing the state may not use proceeds or property received
26 under this chapter to:

27 (1) contribute to a political campaign;

1 (2) make a donation to any entity, except as provided
2 by Subsection (d-2);

3 (3) pay expenses related to the training or education
4 of any member of the judiciary;

5 (4) pay any travel expenses related to attendance at
6 training or education seminars if the expenses violate generally
7 applicable restrictions established by the commissioners court or
8 governing body of the municipality, as applicable;

9 (5) purchase alcoholic beverages;

10 (6) pay for a recurring expense ~~[make any expenditure~~
11 ~~not approved by the commissioners court or governing body of the~~
12 ~~municipality, as applicable, if the head of a law enforcement~~
13 ~~agency or attorney representing the state holds an elective office~~
14 ~~and.~~

15 ~~[(A) the deadline for filing an application for a~~
16 ~~place on the ballot as a candidate for reelection to that office in~~
17 ~~the general primary election has passed and the person did not file~~
18 ~~an application for a place on that ballot; or~~

19 ~~[(B) during the person's current term of office,~~
20 ~~the person was a candidate in a primary, general, or runoff election~~
21 ~~for reelection to that office and was not the prevailing candidate~~
22 ~~in that election]; or~~

23 (7) pay ~~[increase]~~ a salary ~~[, expense, or allowance]~~
24 for an employee of the law enforcement agency or attorney
25 representing the state ~~[who is budgeted by the commissioners court~~
26 ~~or governing body of the municipality unless the commissioners~~
27 ~~court or governing body first approves the increase].~~

1 (d-5) A commissioners court or governing body of a
2 municipality may approve an expenditure of proceeds or property
3 under this chapter only at an open meeting under Chapter 551,
4 Government Code. Each expenditure must be approved by a separate
5 vote of the commissioners court or governing body. The
6 commissioners court or governing body shall include in the written
7 notice of any meeting in which the commissioners court or governing
8 body will consider an expenditure described by this subsection:

9 (1) a description of the expenditure;

10 (2) the purpose of the expenditure; and

11 (3) the amount of the expenditure.

12 SECTION 6. Article 59.061, Code of Criminal Procedure, is
13 amended by amending Subsection (a) and adding Subsection (a-1) to
14 read as follows:

15 (a) The state auditor may at any time ~~[perform an audit or]~~
16 conduct an investigation, in accordance with this article and
17 Chapter 321, Government Code, related to the seizure, forfeiture,
18 receipt, and specific expenditure of proceeds and property received
19 under this chapter.

20 (a-1) At least annually, the state auditor shall perform an
21 audit of each law enforcement agency or attorney representing the
22 state, in accordance with this article and Chapter 321, Government
23 Code, that is related to the seizure, forfeiture, receipt, and
24 specific expenditure of proceeds and property received under this
25 chapter by the agency or attorney.

26 SECTION 7. The changes in law made by this Act to Article
27 59.06, Code of Criminal Procedure, apply only to the expenditure of

1 proceeds or property by a law enforcement agency or attorney
2 representing the state on or after the effective date of this Act.
3 The expenditure of proceeds or property by a law enforcement agency
4 or attorney representing the state before the effective date of
5 this Act is governed by the law in effect on the date the
6 expenditure was made, and the former law is continued in effect for
7 that purpose.

8 SECTION 8. The changes in law made by this Act to Articles
9 [59.02](#), [59.021](#), and [59.05](#), Code of Criminal Procedure, apply only to
10 a forfeiture proceeding that begins on or after the effective date
11 of this Act. A forfeiture proceeding that begins before the
12 effective date of this Act is governed by the law in effect on the
13 date the proceeding begins, and the former law is continued in
14 effect for that purpose.

15 SECTION 9. This Act takes effect September 1, 2017.